
(1972) 12 AHC CK 0023
In the Allahabad High Court
Case No : Second Appeal No. 2540 of 1965

Niranjan Lal

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 12-12-1972

Acts Referred:

Railways Act, 1989 — Section 55, 55(1), 56, 76, 77
Railways Rules, 1890 — Rule 192

Citation : AIR 1973 All 303 : (1973) 43 AWR 318

Hon'ble Judges : T.S. Misra, J

Bench : Single Bench

Advocate : Radha Krishna, for the Appellant; Gurpratap Singh, for the Respondent

Final Decision : Allowed

Judgement

T.S. Misra, J.—This is a plaintiffs appeal arising out of a suit for recovery of certain compensation equivalent to market value of the consignment in question as well as loss of interest and cost of notice. The facts giving rise to this appeal, briefly, are as follows.

2. A consignment of timber wood containing 459 pieces of timber was despatched from Charkarpur to Aligarh Junction under a railway receipt dated 8th February 1962, which was endorsed in favour of the plaintiff for valuable consideration. The consignment was booked without actual weighment from the booking station as there existed no arrangement to weigh the wagon. Consequently the railway staff had made a remark in the railway receipt that the goods be weighed during transit. In the normal course the consignment should have reached its destination within a week but it reached the destination on 24th April 1962, after about two months of its despatch. When the consignment was offered for delivery the plaintiff found that the timber pieces had suffered damage and had cracked at several places. They were also short in number and weight. Consequently the plaintiff brought the said facts to the notice of the

Station Master, Aligarh, who assured the plaintiff that the assessment and re-weighment and counting of pieces would be done after the unloading of the wagon. The plaintiff got the wagon unloaded at the risk and responsibility of the railway administration at a place which was about three furlongs away from the usual place keeping timber wagons. The railway administration, however, did not have the damage assessed despite repeated requests in that behalf of the plaintiff. Ultimately the plaintiff suggested for the appointment of arbitrators for assessing the damages but the railway administration paid no heed to the same. Thereafter the plaintiff requested for the delivery of the goods but the railway staff refused to deliver the consignment unless the plaintiff granted a clear receipt of full weight etc. The plaintiff due to aforesaid acts of misconduct on the part of the railway staff was put to heavy damages. It transpired to the plaintiff that the railway authorities had sold away the goods. The plaintiff challenged the sale of the goods, inter alia, on the grounds that the compliance of the mandatory provisions of Sections 55 and 56 of the Indian Railways Act had not been made. The plaintiff, therefore, claimed the aforesaid damages from the railway administration.

3. The suit was contested on a variety of grounds by the Union of India. It was, inter alia, contended that the railway staff never refused to deliver the consignment and never demanded clear receipt of full weight. As the plaintiff failed to remove the consignment it was put to public auction after complying with the provisions of Sections 55 and 56 of the Indian Railways Act. It was also contended that the defendant was protected by the provisions of Section 73 (f) and (g) of the said Act.

4. The trial Court decreed the suit for Rs. 5,048/52 being the price of the consignment in suit. The rest of the claim was dismissed. Against the said decision the defendant filed an appeal. Having found that the plaintiff was not justified in refusing to take delivery of the consignment, that the suit was barred by Section 72 of the Indian Railways Act and the goods in question had been sold by the defendant after complying with the provisions of the said Act and that no cause of action for the suit had accrued to the plaintiff the appeal was allowed and the suit was dismissed. Aggrieved, the plaintiff has now come to this Court in second appeal.

5. It appears from the judgment of the appellate Court below that the Union of India pressed before it the points covered by issues Nos. 2, 3, 8, 10 and 11 and that the points covered by the remaining issues were not pressed. This means that the findings on issues Nos. 1, 4, 5, 6, 7 and 9 were not assailed before the appellate Court below on behalf of the Union of India at the time of the arguments and the findings on these issues recorded by the trial Court became final. In this way the findings which are conclusive are that the consignment in suit was booked by Pooran Chand consignor at Chakarpur at railway risk, that the consignment reached Aligarh after an unusual delay and that as the said consignment was misdespatched to New Delhi and detained there for a long time

established the negligence and misconduct of the railway employees as a result of which the plaintiff suffered damages, that the plaintiff being an endorsee of the railway receipt for valuable consideration was entitled to sue, that the notices u/s 78 (b) of the Indian Railways Act and Section 80 of the CPC were duly served upon the defendant and in view of the negligence on the part of the defendant railway administration in misdespatching the consignment to New Delhi and detaining it there for sufficiently long time the defendant was not protected by the provisions of Section 73 of the Indian Railways Act. The appellate Court below, however, found that the disputed consignment was weighed at Aligarh and that the railway never refused to give delivery of that consignment to the plaintiff. These findings of fact of the appellate Court below are based on a consideration of the evidence on record and there is no reason to interfere with the same.

6. It, however, appears from the letter of the plaintiff dated 24th April, 1962 (Ex. 25) that the plaintiff was insisting that the damages should be assessed first and that he would not take delivery of the goods unless damages were first assessed. On this letter there is an endorsement of the railway official requiring the plaintiff to unload the wagon and stating that for assessment the matter would be referred to higher authorities. The question, which, therefore, arose before the appellate Court below for consideration and which was pressed in this appeal before me also was whether the plaintiff was entitled to refuse to take delivery of the goods unless the damages were first assessed by the railway authorities. The appellate Court below found against the plaintiff. The learned counsel for the plaintiff appellant assailed this finding and urged that the plaintiff was entitled to insist for the assessment of damages before he was called upon to take delivery of the consignment.

7. The goods in question were booked under the railway receipt dated 1st February, 1962. On that date the goods tariff No. 31 was in force. Rule 118 of Goods Tariff No. 31 provides that railways do not undertake to weigh consignment at destination stations as a matter of course. Such weighments at destination stations can only be considered in exceptional cases when the condition of the consignment or package warrants this. In the instant case the appellate Court below found that the goods in question were weighed by the railway at the destination station. There is no provision in the Goods Tariff No. 31 or in the Railway Act entitling the consignee to have the damages assessed before taking delivery of the consignment. A railway administration is not bound to give open delivery on demand of the consignee nor has a consignee a right to refuse to take delivery of the consignment unless the damages were first assessed by the railway authorities. The consignee has to take delivery of the goods in the condition in which they are found after giving notice to the railway authorities effecting delivery in regard to the condition of the goods and the shortage etc. if there be any, and then to sue the railway administration for shortage or damage as the case may be. The consignee should take delivery of the goods within reasonable time, which normally would be the free time allowed

for demurrage and wharfage by railways. Under Rule 192 of the Goods Tarrif No. 31 the consignee is bound to take delivery of the entire consignment even though part of it is found damaged or missing otherwise the goods would be sold by public auction after complying with the provisions of the Indian Railways Act. It was not established by the plaintiff that the goods had suffered any physical damage during the time they were in the hands of the railway administration after their arrival at destination and when actually open delivery was asked for. The railway was, therefore, not bound to have first the damages assessed before the plaintiff could be called upon to take delivery of the consignment. (See *Badri Das Gauri Dutt Vs. Union of India (UOI)*, . The endorsement made by a railway official on Ex. 5 to the effect that "please unload the wagon and for assessment the matter would be referred to higher authorities" also points out that the railway authorities were willing to deliver the consignment and in fact they clearly asked the plaintiff to unload the wagon and not to defer the unloading till the assessment of damages was made. The plaintiff was, therefore, not justified in refusing to take delivery of the goods unless and until the damages were assessed.

8. It was next urged by the learned counsel for the appellant that the auction sale of the consignment in question held by the railway administration was illegal inasmuch as it did not comply with the mandatory retirements of Section 55 of the Indian Railways Act. The learned counsel urged that the case was governed by Section 55 of the said Act and not by Section 56 as held by the appellate Court below. Relying on the provisions of Section 77 of the Indian Railways Act it was argued on behalf of the respondent that the railway administration was not responsible as a bailee for the loss, destruction, damage, deterioration or non-delivery of the goods after the expiry of 30 days. The appellate court below has also placed reliance on Sub-section (2) of Section 77 of the Railways Act as amended and held that the railway administration was not liable for any compensation for non-delivery in view of the clear terms of that section. Sub-section (1) of Section 77 provides that a railway administration shall be responsible as a bailee under Sections 141, 152 and 161 of the Indian Contract Act for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway within a period of thirty days after the termination of transit. It thus deals with the responsibility of the railway administration after termination of the transit. Subsection (2) of Section 77 provides that the railway administration shall not be responsible in any case for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway, arising after the expiry of the period of thirty days after the termination of transit. The transit is said to terminate on the expiry of the free time allowed (after the arrival of animals or goods at destination) for their unloading from railway wagons without payment of demurrage, and where such unloading has been completed within the free time so allowed, transit terminates on the expiry of the free time allowed for removal of the animals or goods from railway premises without payment of wharfage, Sub-section (2) of Section 77 deals with the case of

damages arising out of loss, destruction, damage, deterioration or non-delivery of goods after the expiry of the period of thirty days after the termination of transit. Hence if loss, destruction, damage, deterioration or non-delivery of goods is alleged to have arise before the termination of transit the provisions of Section 77 would not be attracted. The railway administration is u/s 76 of the Act, responsible for loss, destruction, damage or deterioration of animals or goods proved by the owner to have been caused by delay or detention in their carriage unless the railway administration proves that the delay or detention arose without negligence or misconduct on the part of the railway administration or of any of its servants. In the present case the trial Court found that due to the negligence on the part of the railway administration the consignment was MISdespatched from Bareilly to New Delhi and detained there for sufficiently long time. This finding was not assailed before the appellate Court below and is, therefore, conclude. The case, therefore, falls within the ambit of Section 76 and not of Section 77 of the Act as contended on behalf of the respondents. The responsibility of a railway as a carrier may come to an end within a reasonable time after the goods have reached the destination, its responsibility as a warehouseman however continues and that responsibility Is also the same as that of a bailee. The responsibility as a warehouseman can only come to end in the manner provided by Sections 55 and 56 of the Railways Act and the Rules which have been framed in regard to the disposal of unclaimed goods. In the instant case it is not disputed that the plaintiff approached the railway authorities to take delivery of the goods within the period provided in the rules subject to a condition that the assessment of damages should be made first. It can also not be disputed that the railway authorities were willing to deliver the consignment to the plaintiff and asked the plaintiff to unload the wagon. So far as the question of assessment of damages was concerned the railway official dealing with the delivery of the goods stated that the matter would be referred to the higher authorities. The plaintiff, however, did not take delivery of the goods and continued with his insistence for the assessment of damages before taking delivery thereof. The railway authorities, in the circumstances, could after complying with the provisions of Section 55 of the Act dispose of the goods by public auction. The learned counsel for the appellant argued that the provisions of Section 55 were mandatory and as the compliance thereof was not made by the railway administration its right to claim damages was not affected in any manner whatsoever by the alleged sale by auction. The learned counsel for the respondent, however, urged that the case was governed by Section 56 and not 55 of the Act.

9. Section 55 provides that if a person fails to pay on demand made by or on behalf of a railway administration any rate or other charges due from him in respect of any goods the railway administration may detain the whole or any part of the goods and may sell by public auction, in the case of perishable goods at once, and in the case of other goods on the expiration of at least fifteen days" notice of the intended auction, published in one or more of the local newspapers

or, where there are no such newspapers, in such manner as the Central Government may prescribe, sufficient of such goods to produce a sum equal to the charge, and all expenses of such detention, notice and sale. Section 56 deals with disposal of unclaimed goods. It provides that when any goods have come into the possession of a railway administration for carriage or otherwise and are not claimed by the owner or other person appearing to the railway administration to be entitled thereto, the railway administration shall, if such owner or person is known, cause a notice to be served upon him requiring him to remove the goods and if he does not comply with the requisition in the notice, the railway administration may within a reasonable time, subject to the provisions of any other enactment for the time being in force, sell the goods as nearly as may be under the provisions of Section 55, rendering the surplus, if any, of the proceeds of the sale to any person entitled thereto. In the present case the plaintiff claimed delivery of the goods subject to the condition that the assessment of damages be made first. Whether Section 55 or Section 56 applies to the case the sale could be made only after complying with the provisions of Sub-section (2) of Section 55 which provides that fifteen days' notice of the intended auction should be published in one or more of the local newspapers or, where there are no such newspapers, in such manner as may be prescribed. It was not established that there were no local newspapers at the destination station, viz. Aligarh. Hence fifteen days' notice of the intended auction should have been published in one or more of those local newspapers. In the present case the notice was published in Bir Bharat of Kanpur, Vishwamitra of Kanpur and Northern India Patrika of Allahabad. The trial court held that as no publication of the sale in question was made in local newspapers of Aligarh the sale was illegal and void. The Appellate Court below found that the notice of sale had been served on the plaintiff and he had sufficient knowledge of the intended sale and as the case fell within the provisions of Sub-section (2) of Section 55 the plaintiff's refusal to take delivery amounts to disclaiming the goods and as such strict compliance of the provisions of Sub-section (2) of Section 55 was not necessary.

10. The sale contemplated u/s 55 or Section 56 is by public auction. The connotation of the words "public-auction" as used in Section 55 was considered by the Privy Council in the case of AIR 1938 12 (Privy Council) . It was observed by their Lordships that the words "public auction" mean a public sale at which each bidder offers an increase upon the price offered by the proceeding bidder, the article put up being sold to the highest bidder. This involves the auction being held in public, all members of the public having a right to attend, and a valuable element being the competition between the persons who are openly bidding for the subject-matter of the sale. In the present case notice of the intended sale though published in Bir Bharat, Northern India Patrika and Vishwamitra was not published in any newspaper of Aligarh. The railway administration served a notice purporting to be under Sections 55 and 56 of the Railways Act on the plaintiff, which is Ex. A 10. By this notice, however, no demand for payment of a

fixed sum towards demurrage or wharfage or other charges was made. On the contrary it was stated in the notice that wharfage should be paid as per rules. No amount was specified under the head wharfage. It was, therefore, not in compliance with Sub-section (1) of Section 55. The right of the railway administration to sell the goods consigned u/s 55 (1) of the Railways Act on account of failure to pay demurrage, wharfage or other charges due to the Railways does not arise in the absence of a demand for payment of a fixed sum. Obviously the notice, Ex. A 10, was not in compliance with the provisions of Section 55 of the Act and the sale of goods by the railway administration in these circumstances was, therefore, invalid. It was also invalid because of the non-publication of the intended sale in the local newspapers as required u/s 55 (2). The learned counsel for the respondent urged that as the plaintiff failed to take delivery of the consignment within 15 days of the receipt of the said notice the consignment was treated as an unclaimed property and as such the provisions of Section 56 of the Act became applicable. But even if Section 56 was attracted the railway administration could not sell the consignment in question without complying with the provisions of Sub-section (2) of Section 55 inasmuch as Sub-section (2) of Section 56 provides that the railway administration may within reasonable time sell the goods as nearly as may be under the provisions of the last foregoing section, viz., Section 55. The requirement of publishing the notice of intended auction in the local newspaper was, therefore, to be satisfied even in the case where Section 56 was applicable. In the present case no notice was published in the local newspaper of Aligarh. It must, therefore, be held that the alleged sale was not valid and the railway administration cannot rely on protection given by the Act. The sale being contrary to the provisions of the statute was without legal authority and wrongful and the railway administration was, therefore, guilty of conversion. The measure of damages for conversion would be the value of the goods in question as received at Aligarh in a damaged condition. The trial court had found on the basis of the beejak and Hundi that the total price of the consignment in suit was Rs. 5,048/52 This finding was not disputed by the defendant before the appellate court below. The plaintiff, is, therefore, entitled to recover this beejak price of Rs. 5,048/52 from the defendant. He is, however, not entitled to cost of notice and interest by way of damages. It is well settled that interest by way of damages cannot be awarded.

11. In the result the appeal is allowed with costs, the decree passed by the appellate court below is set aside and the decree passed by the trial court is restored. The defendant shall satisfy the decree within two months hereof.